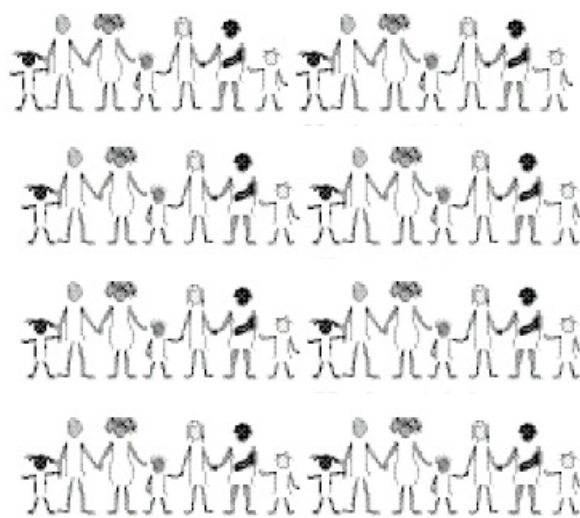


National Advocates
for Pregnant Women



Annual Report 2003

Letter from the Executive Director

Remarkably, when I look up from my desk, I no longer see my bed. I see a small courtyard from the windows of our new office on Waverly Place. What a welcomed change. 2003 was a significant year for National Advocates for Pregnant Women (NAPW) for many reasons, not the least of which was vital organizational growth that included moving our headquarters out of my home to our current space in Greenwich Village, New York.

Conveniently located within walking distance of two leading law schools, and accessible by subway to schools all over New York and New Jersey, we now have space to take advantage of considerable law student talent to help fight the unconscionable war that is being waged against pregnant and parenting women, drug users, and poor families.

When I started NAPW as a project in 1998, I knew that there were significant gaps in the reproductive rights movement and that there was an urgent need to address the ever growing number of fetal rights laws that were being adopted. There was also the need for an organization to build bridges between reproductive rights and drug policy reform; between those who support the right to choose abortion and those who seek to ensure that pregnant women can deliver their babies with dignity and have the resources to support their children. I saw that too often issues of race, poverty and drug use were being used to divide people, and to mask policies that were directly undermining the reproductive and human rights of all of us. So I formed NAPW, and with the help of key foundations and individual donations, have been privileged to keep this vital organization going and growing.

Today, working as a non-profit since 2001, NAPW plays a unique and powerful role in building bridges with intersecting movements and in challenging the stereotypes and punitive policies directed at pregnant and parenting women and drug-users. Throughout 2003 we continued to thwart efforts to



Lynn Paltrow,
Executive Director,
National Advocates for
Pregnant Women.

undermine Roe v. Wade and to expand the war on drugs to women's wombs. We continued our litigation and advocacy—organizing, expanding our Supreme Court victory in the Ferguson case, continuing our work on cases in Kentucky, Missouri, and South Carolina, and working on new cases in New York, Texas, and Hawaii. Nationally, we expanded our leading role in opposing the myths, misinformation and meanness spread by the C.R.A.C.K. program (Children Require a Caring Kommunity) that offers drug users \$200

to get sterilized or go on selective forms of birth control. In March, we released the results of our first poll, documenting the fact that South Carolinians across party lines favor treatment over punishment for all drug users, including pregnant women. Throughout the year we used our publications and phenomenal media coverage to advance the rights of pregnant and parenting women, including those who are low-income and those who use drugs. We were also proud to provide key technical support to medical researchers across the country fed up with the myth of the “crack baby” and the use of the term by America's newspaper of record.

Although the South Carolina Supreme Court has continued on its course of transforming pregnancy into a crime, we have been extraordinarily successful in keeping South Carolina's horrific policies from being adopted anywhere else. When the South Carolina Supreme Court held that Regina McKnight could be convicted as a depraved-heart murderer for experiencing a still birth, we mobilized outrage across the country. We were ready to support continued efforts to reverse her conviction and able to counter new arrests in New York and other states sparked by the decision. In less than a week we were able to organize over 50 public health organizations, experts and advocates to take a public stand in opposition to the arrest of a woman who drank alcohol while pregnant. It is aggressive and creative organizing, litigation, and public education strategies like this that make us confident that

despite new arrests, we will be able to win these cases and ultimately reverse South Carolina's inhuman approach to reproductive health and drug policy.

The need for our unique work is clear. If pregnant women with drug problems give birth not to children but to "litters" or "little rats" as one judge said, what does this say about the humanity of their children? If the C.R.A.C.K. program can spread misinformation suggesting that every current and former drug user (especially those who are poor) would be better off sterilized, what does that say about how we value people with health problems and their families? Every day we challenge the lies told about our clients and offer help to those who advocate for human rights, hope, and compassion.

Our phones ring and the e-mails pour in with requests from individuals and families in desperate

need of capable advocates, advocates in desperate need of expertise, as well as media, policy makers and educators requesting informed comment.

And, while our work continues to be focused in the United States, we are increasingly called upon for comment by international media and for information and materials by international drug policy reform and women's rights advocates.

We have a new office, a growing staff, and an on-going commitment to advocacy informed by compassion, evidence based research, and the lessons of numerous intersecting issues. With all of this, I know that we will continue to play a key role in protecting the reproductive and human rights of pregnant and parenting women, as well as those people who because of poverty, race, or drug use, are targets of dehumanizing policy and discourse.

LYNN M. PALTROW

Litigation, Litigation Support & Legal Advocacy

Through litigation and litigation support, NAPW has successfully challenged efforts to expand the war on drugs, has kept mothers out of jail and children with their families. Throughout 2003, we were actively involved in court challenges across the country, finding experts to testify, locating counsel, providing model briefs and research, and organizing widespread opposition to punitive approaches from the public health, women's rights, and drug policy reform communities. For many public defenders around the country, we act as a kind of "National Legal Services Back-up Center," providing essential legal support to local lawyers suddenly faced with cases that raise a host of legal and medical issues with which they are unfamiliar. Combining our legal skills with our vast collection of material and a commitment to public education, we are able to provide not only local lawyers, but also defendants, activists, researchers, and the media

with vital legal, scientific, policy and advocacy information on the interconnected issues of reproductive rights, drug policy, public health, child welfare, race and social justice.

NAPW sees each case as an opportunity to empower local activists and the women who are directly affected. NAPW uses each case to mobilize a growing number of medical, public health and social justice organizations, and to move academics, health care providers and educators to become effective political activists. One of the ways we accomplish this is by organizing and submitting "amicus briefs." Amicus Curiae, a latin phrase that means "friend of the court," are written arguments submitted to the court to provide expertise on the issues raised in the case. These briefs provide valuable information to the court on how a case might affect people other than the parties to the case, as well as evidence based information on the medical and scientific issues involved. They are

powerful educational tools that provide the court with the contextual background that is often not provided by the lawyers representing the individuals in the case.

Amicus briefs can also act as unofficial petitions – demonstrating agreement on an issue of which the court might otherwise be unaware. For example, NAPW can use an amicus brief to show that there is overwhelming consensus among leading medical and child welfare groups that punitive policies undermine both maternal and fetal health. An amicus brief filed on behalf of a long list of distinguished organizations and

researchers lets the court know that protecting human rights is not only mandated as a matter of law and public health principles, but also a “popular” position among leaders in the field. By signing on to an amicus brief or public statement these groups commit themselves publicly to a position opposing punitive approaches. After making that commitment, the organizations and individuals often go on to speak out in other contexts against similar punitive, drug war, anti-woman, anti-family actions. No matter what our involvement, NAPW does not litigate and leave. We litigate and build.

Litigation

Ferguson v. City of Charleston

In 1989, the Medical University of South Carolina, a public hospital in Charleston, began selectively and secretly testing pregnant women for cocaine use. If a woman tested positive, she was not given the option to talk with a drug abuse counselor or referred to an appropriate treatment facility. Instead, hospital staff worked with police to initiate an in-house arrest. Thirty women, twenty-nine of whom were African-American, were arrested and forcibly removed from the hospital in chains and shackles, evoking modern images of slavery. In 2001, nearly a decade after NAPW’s executive director filed the complaint in the case, the United States Supreme Court ruled that this policy violated the Fourth Amendment’s prohibition on unreasonable searches and seizures; a victory for the rights of all hospital patients, not just pregnant ones.

The case, however, was still not over. The Supreme Court noted that while the searches were covered by the Fourth Amendment, if the patients had consented to those searches they would not be entitled to any damages



Crystal Ferguson
and her daughter.

for the resulting arrests and humiliations. The case was sent back down (remanded) to the Fourth Circuit Court of Appeals, the federal appellate court that covers South Carolina. The defendants in the case relentlessly defended their policies. They argued that a patient who consents to medical tests is also consenting to being searched on behalf of the police. NAPW and our allies argued vigorously that medical patients do not waive their constitutional rights by confiding in their doctors or agreeing to undergo examination and tests for medical purposes. The Fourth Circuit Court of Appeals — notoriously conservative though it is — agreed with us, preserving an essential aspect of patient privacy.

Nonetheless, the defendants continued to fight for the right to search and interrogate public hospital patients. They appealed again, filing what is called a petition for certiorari — asking the United States Supreme Court to take the case a second time and on this occasion, to overturn the Fourth Circuit’s sensible determination that consenting to a medical exam is not the same thing as consenting to search for criminal justice purposes.

Indeed, Counsel for the defendants seemed intent on prolonging the case, highlighting their obvious disregard for the basic rights of pregnant women and public hospital patients. Working with co-counsel and the Drug Policy Alliance, NAPW opposed this petition along with an impressive list of public health organizations and leading medical ethicists. In 2003, the Supreme Court refused to take the case, allowing our many victories to stand.

Following this death knell to the defendants' efforts to turn doctors into police agents, NAPW took vigorous action to educate doctors and medical staff about the rulings and the fact that not only are they *not* required to turn their pregnant patients over to the police, doing so is a violation of the United States Constitution.

NAPW is committed to continuing the fight for the rights of these women, for however long it takes. What remains to be done is for the women harmed as a result of these unconstitutional practices to seek damages. This could mean numerous costly, time-consuming, and emotionally traumatizing individual trials for each plaintiff on the issue of damages. On the other hand, having won many federal court victories, and having coordinated media events demonstrating public support for treatment over punishment (see discussion of our polling work below) we hold some hope that the defendants will eventually agree to settle this precedent setting civil rights case. Throughout all of this we feel privileged to work with women who have been willing to stand up for their right. We feel honored, as well, to work with local counsel Susan K. Dunn who continues to represent the Ferguson plaintiffs so bravely and tirelessly.

***It's pretty neat.
Use drugs.
Your baby dies
It's homicide . . .***

. . . except for this detail. There is virtually no solid evidence accepted by any reputable medical researchers that link prenatal cocaine use with an increased likelihood of stillbirths . . .

Within week of Mercedes McKnight's 2001 death, the Journal of the American Medical Association published a study by a team of Boston University and Harvard researchers, led by Deborah A. Frank, that concluded that there is no evidence "cocaine use by pregnant women leads to childhood devastation..."

Monday's non-ruling by the Supremes upheld the conviction and the record-setting sentence. It left South Carolina's 1997 fetal rights ruling intact.

But it will not save the life of even one unborn child.

Elmer Smith, *The Baby Drug War*,
Philadelphia Daily News, Oct 8, 2003

South Carolina v. Regina McKnight

In 2001, 22-year-old Regina McKnight became the first woman in U.S. history to be tried and convicted of homicide by child abuse based on the fact that she suffered a stillbirth. The loss of her baby was blamed on her drug use. Despite the lack of any credible evidence that the stillbirth was caused by the cocaine she took and even though all agreed she had no intent to lose the pregnancy, the

jury deliberated for less than fifteen minutes and Ms. McKnight, a woman with no criminal record, was sentenced to twenty years imprisonment, with eight years suspended.

NAPW spearheaded the appeal, enlisting the aid of the Jenner & Block law firm on behalf of the DKT Liberty Project, the Drug Policy Alliance and working with local counsel C. Rauch Wise of the S.C.ACLU and the Drug Policy Alliance. In spite of excellent briefing, an impressive oral argument and excellent amicus briefs on behalf of leading medical groups, a bare majority of the State Supreme Court upheld the conviction. On January 27, 2003, we received the devastating news: under South Carolina law, a pregnant woman who unintentionally heightens the risk of a stillbirth can be found guilty of "depraved heart" homicide. Simply put, a pregnant woman who suffers a stillbirth can be punished for it, regardless of the cause. Indeed, the local prosecutor stated, "Even if a legal substance is used, if we can determine you are medically responsible for a child's demise, we will file charges."

Although not entirely unexpected, it was nevertheless a devastating loss. NAPW immediately began strategizing for continued efforts on behalf of Ms. McKnight and women and children in the

state. Through our ever-growing database we reached out to people, asking them to send letters of support to Ms. McKnight. The McKnight decision was so outrageous, however that we were able to use it to ignite a new level of outrage around the country and to enlist new support.

We began writing and organizing the written papers necessary to ask the United States Supreme Court to review the State Supreme Court's decision. With the aid of lawyer David T. Goldberg we filed a petition for certiorari asking the US Supreme Court to consider the constitutionality of the state court's decision. The petition argued in part that the State Supreme Court's decision violates due process guarantees of the Federal Constitution by permitting a homicide conviction on any evidence that a pregnant woman engaged in activity "public[ly] know[n]" to be "potentially fatal" to a fetus. The petition explained that in view of the vast range of conditions, circumstances, and actions known to heighten fetal risk – and the substantial limitations of even medical experts' understanding of pregnancy loss – pregnant women in South Carolina are left without any reliable basis for determining whether, in the event of stillbirth, they could be punished, with life imprisonment, for "homicide."

The Drug Policy Alliance filed a public health amicus arguing that the McKnight decision threatens the health of all childbearing women in South Carolina, undermines the accepted standards of care for treating women who suffer stillbirths, deters pregnant women from seeking care, and in addition to all that was based on medical conclusions that lacked any scientific basis. NAPW worked hard to identify new organizations, to take a stand on these issues. In the end, an impressive number of public health groups as well as those committed to addressing pregnancy loss signed on: the National Stillbirth Society,

American Psychiatric Association, South Carolina Medical Association, South Carolina Primary Health Care Association, Physician Leadership on National Drug Policy, Association of Maternal and Child Health Programs, Black Women's Health Imperative, Citizens for Midwifery, Hygeia Foundation, Inc., Recovery, Physicians for Reproductive Choice and Health and Doctors of the World, among others joined the effort.

At the same time Jenner & Block and local counsel Mr. Wise, our staunch ally from

Greenwood, South Carolina, began the process of filing a habeas petition, challenging Ms. McKnight's conviction in the state court system based on ineffective assistance of counsel at trial. NAPW also helped preserve the one big victory in the case. At trial, the judge had at least thrown out another charge against Ms. McKnight — delivery of drugs (through the umbilical cord). The State, apparently believing a conviction for homicide was not enough, appealed the dismissal asking the State

Supreme Court to permit the state to re-try her on that charge as well. NAPW helped local counsel challenge this effort. We also successfully enlisted the aid of Jill Morrison at the National Women's Law Center (Washington, D.C.) to file an amicus brief on behalf of the South Carolina NOW, Charleston NOW, South Carolina Advocates for Pregnant Women and the Charleston Chapter of the Progressive Network opposing the application of drug delivery laws to pregnant women. This brief was the first of its kind, challenging the state's assumption that any pregnant woman who ingests cocaine does so for the purpose of delivering the drug to her fetus. As the brief explained:

While it is recognized that any man who consumes drugs may do so for a variety of reasons, including his need to stave off painful withdrawal symptoms,

February 1, 2003

Dear Lynn,

I addressed the envelope to [Ms. McKnight] before I began this, and will send a note today. I'm in Germany – we'll add some 'international support' that way. Poor her, of course, & poor you! Hang in there! What can I say to you that is not a cliché—I admire enormously what you are doing and wish you all the strength in the world to keep doing it.

Warmest fondest regards,
Barbara Katz Rothman

the prosecution urged by the State here requires the assumption that once a woman becomes pregnant, her use of drugs must be motivated by an intent to distribute the drug to her fetus. This unfounded and stereotyped presumption of motivations amounts to unlawful sex discrimination.

In February of 2003, the South Carolina Supreme Court unanimously ruled against the state. Although the court upheld the dismissal of the delivery charges on double jeopardy grounds (making it unconstitutional to try someone twice for the same crime), we have no doubt that the amicus brief played an important role in educating the court and galvanizing state-based opposition to the arrest.

Later in the year however, we were disappointed again. The U.S. Supreme Court declined to review the homicide conviction. We knew our chances of getting Supreme Court review were slim (the Court receives approximately 7,000 petitions asking it to review cases each year, and only accepts about 150) so we were prepared to find new ways to continue the fight on behalf of Ms. McKnight. NAPW used this refusal to draw attention to South Carolina's dangerous and counterproductive decisions that expand fetal rights and the war on drugs and obtained significant new support. Numerous people who had previously

Regina McKnight is doing twelve years in prison for a stillbirth, carving out a dangerous intersection between the drug war and the antichoice movement. In the eyes of the South Carolina Attorney General's office, McKnight committed murder.

Her crime? Giving birth to a five-pound, stillborn baby. As McKnight grieved and held her third daughter Mercedes' lifeless body, she could never have imagined that she was about to become the first woman in America convicted for murder by using cocaine while pregnant.

The absence of any scientific research linking cocaine use to stillbirth didn't matter. Nor did it matter that the state couldn't conclusively prove that her cocaine use actually caused Mercedes's stillbirth. What mattered was that South Carolina prosecutors were hellbent on using McKnight as an example. . .

"What South Carolina has done, in effect, is made pregnancy a crime waiting to happen," says Lynn Paltrow, an attorney and the executive director of National Advocates for Pregnant Women in New York.

Paltrow served as one of the attorneys who took the appeal to the nation's highest court. In so doing, she joined twenty-seven other medical and drug policy groups that sought to overturn the conviction, including the American Public Health Association, the American Nurses Association and the American Society of Addiction Medicine. These mainstream health organizations saw the situation exactly for what it was: an extreme manifestation of an increasingly successful antichoice agenda wrapped in the cloak of the War on Drugs. . .

Women like McKnight and Aiwohi are the victims of prosecutors who have decided that they have the right to judge and punish women for what happens to their bodies. It is a definitive step toward a government that would have the power to tell us what constitutes acceptable pregnancy and motherhood.

The Nation.Com
Criminalizing Motherhood
by Silja J.A. Talvi

been silent on the issue were compelled to speak out and powerful op-ed pieces expressed staunch opposition to the criminalization of pregnancy, addiction, and the experience of stillbirth. NAPW turned this defeat into an opportunity to inform, educate and mobilize.

While the McKnight case provided prosecutors in other states with an excuse to arrest pregnant women, the extensive organizing and educating in opposition has eroded much of its potency. So while there are new arrests of pregnant women — and these must be stopped—there have been no new decisions upholding these abuses of prosecutorial power. NAPW and our colleagues continue to work ardently to pursue the remaining legal appeals in the McKnight case and to stay ahead of the curve. At every opportunity we illustrate

that punishing women who are pregnant, including those addicted to drugs, is a cultural and political phenomenon based on the beliefs of extremists that should not be made into law.

Commonwealth v. Harris

In February of 2003, a Kentucky woman, Misti Harris, was charged with child abuse, because, it was alleged that she was pregnant and using oxycontin. Following explicit state law precedent,

the trial court dismissed the charge. The State appealed. Working with local and national groups, NAPW and Drug Policy Alliance filed an impressive public health amicus brief explaining why this prosecution was both unconstitutional and dangerous to women and children's health. We also worked to organize state-based drug treatment activists and helped to ensure that Ms. Harris' brief as well as an amicus brief written by the ACLU were filed. The Kentucky appellate court, unaccustomed to public health amicus, surprised us by turning down our request to formally file the brief. The court however had to read it before it could reject it. As a result, we are confident that the extensive list of leading national and local organizations opposing the arrest made an impression on the court.

At the end of the year Ms. Harris was out of jail, and awaiting the decision on appeal. This holiday season she wrote to us saying simply: "Thanks for all your help so I can now enjoy the holidays with my family."

Missouri v. Smith

In Kansas City Missouri, more than twenty women were arrested at Truman Hospital, a public hospital, for giving birth to newborns who tested positive for cocaine. Following in South Carolina's footsteps, sixteen of the twenty women were African-American. Rhona Smith was one of those women. Her prosecution became the test case to determine whether pregnant women with drug and other health problems may be prosecuted as child abusers and if the state's declaration that human life begins at fertilization provides the legal basis for such prosecutions.

NAPW assisted the local public defender, co-authored a public health amicus brief, and used local contacts and networks to organize a private letter to the prosecutor and meetings with staff and trustees of the hospital that was turning the women over to the police. Although there has been no decision in the case, there also have been no new arrests for over a year. We are confident that aggressive and comprehensive opposition to the arrests helped to stop a trend that was contrary to the law, public health and human decency.

State v. Stacey Gilligan

On September 27, 2003, a woman from upstate New York, Stacey Gilligan, age twenty-two, gave birth to a baby boy who allegedly tested positive for alcohol. Several days later, Ms. Gilligan was arrested by Glens Falls police and charged with two counts of child endangerment. The counts allege that Ms. Gilligan "knowingly fed her blood" (via the umbilical cord) containing alcohol to her baby in the process of giving birth. The local prosecutor Kate Hogan, who was simultaneously running for Warren County Supreme Court Judge, filed the preposterous charges. Citing the the Supreme Court's recent refusal to reconsider the McKnight decision, the prosecutor said it "Bolster[ed] our argument that you can charge in a case like this."

Both NAPW and the New York Civil Liberties Union (NYCLU) were contacted about the case. We joined forces and together provided resources to Ms. Gilligan's local counsel. Together we also organized state and national opposition to the prosecution. In less than a week, NAPW, with the assistance of the Drug Policy Alliance, organized over fifty public health organizations, experts, and related advocates to sign on to a public letter directed to the prosecutor.

Despite what prosecutors and politicians say, the arrest and prosecution of Stacey Gilligan and other women like her, is not an effective child protection method. Threatening women with jail does not address alcohol dependency. Instead, it sends a dangerous message that seeking pre- and postnatal care can lead to criminal sanctions. In fact, as every leading health group has concluded, this and similar arrests are likely to increase the risk of harm to children, not reduce it. The letter states in part:

"Medical knowledge about addiction and dependency treatment demonstrates that patients do not, and cannot, simply stop their drug use as a result of threats of arrest or other negative consequences. In fact, threat-based approaches do not protect children. They have been shown to deter pregnant and parenting women not from using drugs, but from seeking prenatal care and drug and alcohol treatment."

Dr. Sheila Blume, a nationally recognized expert

on women and alcoholism and one of the experts signing the letter explains, "Alcoholism is recognized as a disease by all medical authorities. People suffering from alcoholism need and deserve treatment, not punishment. Alcoholics can and do recover, but they need help to do so." As Ms. Gilligan told Craig Smith of WNYT-News Channel 13, "I have always had depression my whole life, I did not want to hurt my baby and never thought of hurting him, but I have a drinking problem and I would like help for it."

Our letter received wide-spread local attention in the press, radio and television and provided the first opposition to the arrest reported in the media. It also became part of a national story that first ran in the *Chicago Tribune*, "Pregnant Addicts Face Rise in Prosecutions." The story not only mentioned the letter and organized opposition, but also focused attention on the evidence of harm the prosecutions create by deterring women from seeking health care.

In addition to the public letter, NAPW with NYCLU provided support to Ms. Gilligan's legal counsel Robert Kelly and filed an amicus brief on behalf of the American Public Health Association, National Council on Alcoholism and Drug Dependence and the National Coalition for Child Protection Reform. The brief asked the Glens Falls City Court to dismiss

the prosecution of Ms. Gilligan because it violates New York law and flies in the face of the well-established medical community consensus that such prosecutions are irrational, ineffective, and counter-productive. Likewise, in a motion (written request) to the court, the organizations explained that the problems posed by alcohol and drugs are serious public health issues that should be dealt with as diseases, not crimes.

In the course of the litigation, NAPW also

"This prosecution and others like them are great for publicity for the prosecutor," said Lynn Paltrow, executive director of the National Advocates for Pregnant Women. "They're terrible for the health of children. ... The result inevitably is to frighten women away from seeking whatever little treatment is available for them."

Joel Stashenko, Groups urge DA not to go after intoxicated baby's mother, *The Associated Press, State and Local Wire* (October 31, 2003).

recognized that the prosecutors were revealing highly confidential medical treatment information in clear violation of the Federal Drug Treatment Confidentiality Statute. This statute, created in the 1970's, was based on the recognition that alcoholics and drug addicts were unlikely to seek treatment if they could not be assured confidentiality. The law provides special protection for information regarding diagnosis and treatment for drug depen-

dency. Defense of confidentiality has implications for all people seeking and needing drug treatment – not just for pregnant and parenting women. By highlighting this, NAPW provided important legal resources to local counsel to keep this information about Ms. Gilligan from being presented in open court and used to justify a baseless prosecution.

We are still awaiting a decision in the case.

Litigation Support and Legal Advocacy

In December 1998, twenty-four year-old Angela Shannette Kennedy suffered a stillbirth at the Spartanburg Regional Medical Center in South Carolina. A hospital employee called 911 to report that the stillbirth was suspicious. Even as she lay in a hospital bed dealing with the trauma of delivering a stillborn Ms. Kennedy was interrogated by police.

Years passed, and then in 2003, shortly after the US Supreme Court decided not to review the McKnight decision, the state filed homicide charges against Ms. Kennedy and took her into custody. NAPW worked extensively with local counsel to challenge the legitimacy of the prosecution and to help him prepare for a trial that would build on lessons learned from the McKnight case.

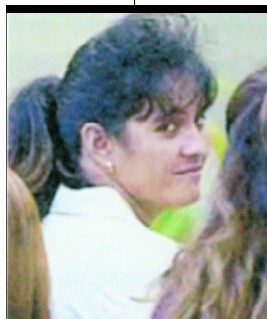
We introduced local counsel to health experts and activists and encouraged him to challenge aggressively the prosecution, demanding an explanation of the prosecutor's policies regarding drug treatment (Why hadn't Ms. Kennedy been offered drug treatment prior to the arrest?), the basis for the arrest, and why alternatives including drug court were not being pursued.

In response, the prosecutor offered to drop the homicide charge if Ms. Kennedy would take a plea to child endangering charges instead. While this is far from our ultimate goal of making pregnancy prosecutions of any kind unthinkable, in a state where women can in fact be found guilty of murder for suffering a stillbirth, we have been told that this should be considered a victory. In another case we had a clearer victory. Following NAPW's advice, a public defender in Greenwood challenged the basis for an arrest of a new mother and was successful in getting the charges dropped altogether.

Hawaii v. Aiwohi

In October, Tayshea Aiwohi became the first woman in Hawaii to be prosecuted for manslaughter based on the claim that her use of methamphetamine while pregnant caused her son to die shortly after birth.

Although the local prosecutor, Peter Carlisle, claimed the McKnight decision played no role in his decision to file the charges, local press about the case noted: "The charges against Aiwohi were filed just days after the U.S. Supreme Court refused to examine a South Carolina case in which a woman was convicted of poisoning her baby by using cocaine during pregnancy. That baby was stillborn; the conviction was based on South Carolina law, which specifically extends homicide prosecution to cases involving a fetus." The prosecutor insists that state law permits prosecution, and says his office might even consider assault prosecutions of "meth moms" and heavy alcohol abusers whose babies are born injured but do not die.



Tayshea Aiwohi, a native Hawaiian, as featured in a *Honolulu Advisor* story about her arrest.

NAPW jumped into action, quickly becoming a key resource for lawyers, activists and media. We helped link medical experts and potential trial experts to local counsel and activists. We provided model briefs to counsel, participated in a national conference call with legal experts and local counsel, and provided technical support to an excellent group of local health activists joined in strong opposition.

We provided local activists with a copy of the

Glens Falls sign-on letter to use as a model for organizing local opposition. Local activists began obtaining individual and organizational support for the letter opposing the prosecution. NAPW began organizing national opposition as well. As a result of prompt, proactive and coordinated action, local press on the case presented an unusually fair and accurate report of the issues and acknowledged widespread opposition from medical and public health groups.

Texas

Events in Texas provide a frightening example of how the war on abortion and the war on drugs intersect to harm pregnant and parenting women and their families. For years, anti-choice activists in Texas sought to pass a law declaring the legal rights of fetuses. In 2003, they finally succeeded. In September, they passed laws amending the definition of an individual in the Texas criminal and civil codes to mean "a human being who is alive, including an unborn child at every stage of gestation from fertilization until birth." The statute also redefines death to include "an individual who is an unborn child, the failure to be born alive." Today numerous states have such laws declaring fetal rights. To survive constitutional challenge all of these laws contain an exception for the right to choose abortion. Some also make clear that other actions the pregnant woman takes regarding her own body are protected.

The Texas laws do have exceptions – but they are tied to particular statutes. As a result, the law

does not apply to the injury or death of an unborn child if the conduct charged is committed by the mother of the unborn child, but only if the crime charged is homicide, assault, or something called "intoxication assault."

A local prosecutor noticed how the bill was written and decided the state's fetal rights law could be used not only to punish pregnant women but also to expand the war on drugs. She argues the state's law that criminalizes delivery of a controlled substance to a child does not specifically exclude unborn children, and as a result now makes it possible to arrest pregnant drug using women.

In a letter dated September 22, 2003 and addressed to "All Physicians Practicing in Potter County," Rebecca King, District Attorney for the 47th Judicial District of Texas, asserted that, in light of the new fetal rights law, physicians were now legally required to report pregnant women who are using or have used illegal narcotics during their pregnancies. Reports are to be made to the local police department or the Department of Protective and Regulatory Services and arrests would be made under the state's drug delivery law.

NAPW was contacted to help analyze and develop challenges to this strained interpretation of the new law. Working with Texas and Drug Policy Alliance lawyers and activists, we provided an initial analysis finding that the local prosecutor's interpretation was without legal foundation. We also provided local activists with much needed information about how such a reporting and arresting law would undermine women's and children's health.

A Phoenix baby's death [allegedly] by crack cocaine two years ago has sparked one of the most controversial proposals state lawmakers will face next session as they try to reform Child Protective Services.

At issue is whether a positive drug test on a newborn means the baby has been abused...Lynn Paltrow, director of the non-profit National Advocates for Pregnant Women in New York, said the question should be whether the mother is capable of parenting, not whether a drug test was positive

Karina Bland, CPS reform: Hard choices; Lawmakers struggle over policy on drug babies, *The Arizona Republic*, (September 13, 2003)

Elizabeth Armstrong, an assistant sociology professor at Princeton University in New Jersey . . . said such a policy could keep women from seeking medical care and even prompt some to give birth alone to avoid detection. "Almost all women want the best for their children and are genuinely motivated to be good mothers," Armstrong wrote to the commission and media. "We should focus on helping them to achieve this goal, rather than punishing them when they are unable to do so."

Karina Bland, CPS Panel Puts Kid Safety No. 1; says family can't be top priority, *The Arizona Republic*, June 28, 2003,

Local ACLU activists were galvanized into action and began working with state legislators to make clear that the fetal rights law was not intended to be used to punish pregnant women who seek medical help.

Arizona

Confusing the war on drugs with the welfare of children.

In Arizona, in 2002, a governor-appointed child abuse panel was established in response to a highly publicized murder prosecution that claimed a woman's drug use during pregnancy and while breast-feeding caused an infant's death. In the summer of 2003, NAPW learned that the panel was likely to recommend that the state treat a positive drug or alcohol test on a pregnant woman or newborn as presumptive neglect.

Both the National Coalition for Child Protection Reform (NCCPR) and a local state legislator asked for our analysis. NAPW prepared an extensive legal analysis and asked other leading experts, including Professor Elizabeth Armstrong to do the same. Professor Armstrong

addressed issues relating to fetal alcohol syndrome and made recommendations for alternative, positive interventions. We sent this information to the Governor, policymakers and the press and received significant attention. As a result, we are pleased to say that the Arizona Legislature recently rejected proposals to treat drug use as a basis for requiring child welfare interventions regardless of parenting ability. NAPW is now consistently contacted as a key resource for information when similar proposals arise in other states.

Public Education and Social Marketing

NAPW is committed to undoing decades of misinformation and political posturing about pregnancy and drug use. Through traditional tools such as press releases, and posting information on our web site, to creative art installations demonstrating how urine drug screening is increasingly being used to deprive individuals – including pregnant women, parents, and their children of their civil liberties, we are getting our message out. NAPW takes every opportunity to expose the propaganda behind destructive and dehumanizing stereotypes about pregnant women and drug users. NAPW uses a variety of methods and strategies to educate the public, policymakers, advocates and activists about the myths and misinformation relating to the war on drugs, drug use, pregnancy, and parenting, always with the understanding that public education is a community effort.

Sometimes we take the lead on an issue as with our highly publicized confrontations with the C.R.A.C.K. program and our unrelenting stance challenging baseless medical conclusions presented in a New Jersey child fatality report. Other times, (described below), we play the supporting role, as in the case of debunking the myth of the “crack baby.” Always, we work collaboratively, creating liaisons with individuals and organizations that are able to complement our abilities and expertise to create a broader, stronger voice.

The “Crack Baby” Label

In the 1980’s, the hard knot of cocaine that was smoked through a pipe was introduced to the mainstream by the American media with unrivaled zeal. Stories conjured up images of depraved individuals so intent on an instant fleeting high, they abandoned their families, their babies and their homes and turned into crazy, morally bankrupt thieves who threatened the sanctity of society. The “crack baby” was at the center of this mythology, considered the irre-

deemably damaged offspring of a heartless mother addicted to crack. Despite the fact that medical research failed to support the existence of such a phenomenon, the misnomer has captured the imaginations of journalists and popular culture nationwide. In 2003, a research doctor and pediatrician led a group of doctors and scientists to finally speak out. They came to NAPW for the technical support to follow through.

Medical researchers outraged by *The New York Times*’ coverage of a New Jersey child welfare case in which parents who had starved four adoptive foster children blamed their emaciation on the “fact” they had been born “crack babies,” contacted NAPW for aid in presenting a medical response to the repeated and unjustified use of such terms as “crack baby,” and “crack addicted baby.” Despite the lack of a medical or scientific basis for the use of these pejorative and stigmatizing labels, the terms have been repeatedly used by *The New York Times* in a variety of contexts. For example, a 1997 article entitled *Uncertain Future, on Their Own, Awaits* stated, “Her second child, Stanton, was born toxic, a crack baby.” Iver Peterson validated the use of the term in a 2003 story about the New Jersey case, *In Home That Looked Loving, 4 Boys’ Suffering Was Unseen*, stating, “Michael, the youngest, was born a crack baby before being taken in.” Anemona Hartocollis, in a column entitled *Of Tooth And Claw: A Kitten Gets Mugged*, used the term “crack baby” as a metaphor for a potentially brain-damaged stray kitten. She wrote, “Grisa was born like a crack baby under the stoop of a Harlem brownstone, progeny of a stray feline who got around, as the neighbors liked to say. Who knew what neurological or psychological problems might lurk under that filthy, matted, flea-infested fur?”

Determined to challenge these appalling examples of stigmatization and misinformation, a group of scientists, including virtually every leading U.S. and Canadian researcher on the subject of prenatal exposure to cocaine, drafted a letter asking *The New York Times* to drop the term and

forbid its use as a matter of official "style" policy. In response, the paper published a short version of the letter and subsequent stories on the New Jersey case no longer referred to "crack babies."

The fight continues. The group of researchers has grown and, with NAPW's assistance plans to prepare a version of the letter for widespread media distribution. This will be an important tool in challenging the lies and myths about cocaine, prenatal exposure to cocaine, children exposed, and addiction itself. NAPW believes that drug policy reform efforts to de-stigmatize drug users and to shift policies from punishment to treatment will fail if the myth of crack babies and crack mothers destroying a generation of children is left unchallenged.

The C.R.A.C.K. Epidemic

One of the biggest sources of misinformation related to drug users in general and drug using pregnant women in particular turns out to be the C.R.A.C.K. program. C.R.A.C.K. which offers current and former drug users \$200.00 to get sterilized or to use long-acting birth control, serves as an extraordinary propaganda machine using its resources to spread misinformation, prejudice and shame. Among the destructive claims they make is that drug treatment does not work, that certain drug users and their children are hopeless, unworthy of treatment or help, and that drug use during pregnancy is a form of "legal child abuse." C.R.A.C.K. does extensive outreach to churches, probation officers and prisons across the country.

Early in the year, *The New York Times* co-

vered their efforts to bring the program to New York City. NAPW worked successfully to ensure that the story did not use stigmatizing media created terms such as "crack addicted newborn" and that it reported at least some of the truly horrific statements the program has made about the

women they purport to help. The story noted the organization's founder had commented: "We don't allow dogs to breed. We spay them. We neuter them. We try to keep them from having unwanted puppies, and yet these women are literally having litters of children."

We also contacted the two hospitals reported to be considering a cooperative relationship with C.R.A.C.K. One, Brookdale University Hospital in Brooklyn, had already sought and obtained a correction in *The New York Times*, explaining that they did not intend to work with C.R.A.C.K. Lutheran Hospital, in response to a letter we sent with the New York Civil Liberties Union, announced it also would not be cooperating with C.R.A.C.K. We also mobilized colleagues and experts to write to *The Washington Times* when they ran a follow-up story on the C.R.A.C.K. program. Throughout the year we took every opportunity to challenge C.R.A.C.K. propaganda.

In April of 2003, we participated in a special symposium sponsored by Wayne State University Law School in Michigan, entitled Project Prevention: Cash for Birth Control, a Solution or a Violation of Rights? In addition, we appeared on numerous radio and television shows providing reasoned opposition to C.R.A.C.K.'s seemingly simple cure for the problems of drug use and poverty. In December 2003, Lynn Paltrow debated

On November 28, 2003 the *New York Times* published the following:

'CRACK BABY' SYNDROME?

To the Editor:

We are medical and psychological researchers who are concerned about your use of the term "crack baby." During years of studying addictions and prenatal exposure to psychoactive substances, none of us have ever identified a recognizable condition, syndrome or disorder that could be termed "crack baby." Some of our published research finds subtle effects of prenatal cocaine exposure in selected developmental domains, while other of our research publications do not. "Crack baby" is not a medical diagnosis but a media stereotype.

Such pejorative stigmatization of children is not only scientifically inaccurate but also dangerous. An Oct. 28 news article illustrates how this stereo-type delayed interventions while a New Jersey family apparently starved several of their adopted children, misrepresenting to neighbors and professionals that the four boys had been born addicted to crack cocaine.

Deborah A. Frank, M.D.
Professor of Pediatrics
Boston U. School of Medicine
Boston, Nov. 24, 2003
The letter was also signed by 27
American and Canadian researchers.

Jim Woodhill, a C.R.A.C.K. funder and board member, at Columbia University Law School. Throughout our efforts to challenge the C.R.A.C.K. program's myths and misinformation, we enlisted new experts and spokespeople. For example, Dr. Ann Boyer, a practicing obstetrician and gynecologist and clinical instructor with the Mt. Sinai School of Medicine in New York, joined us at the Wayne State Symposium and also provided objective medical expertise on the John Walsh Talk Show. We also enlisted Mary Barr, Executive Director of Conexions, to bring her personal and professional experience with addiction, the child welfare system and the criminal justice system to bear on the claims made by the C.R.A.C.K. program.

In addition to all of this, we worked extensively to gather information about the program and to prepare a comprehensive paper challenging C.R.A.C.K.'s underlying ideology. To be published next year, this examination makes clear that, far from providing a useful response to problems associated with drug use and pregnancy, C.R.A.C.K. instead acts as a dangerous vector for medical misinformation and political propaganda that could undermine the rights and civil liberties of all Americans. Under the guise of openness, "voluntary" choice, and personal empowerment, C.R.A.C.K. not only promotes a vicious and inaccurate image

LETTERS TO THE EDITOR

The Washington Times
January 10, 2003

I am a former crack cocaine user. The first thing I did when I found out I was pregnant was to seek help. There were no treatment centers for pregnant women where I lived, but I found a shelter for pregnant women where I attended Narcotics Anonymous meetings and stayed clean through my entire pregnancy.

Today I am a wonderful parent. While I am playing Monopoly with my children, I thank God I was never sterilized. We need to stimulate, not sterilize, an abuser's potential.

Mary Barr
Executive Director
Conexions Inc.

"Their material broadly suggests that there is a particular portion of the population that should not be, or that is not worthy of, reproducing the human race. The risk is that this will be easily interpreted to mean that this group is unworthy of being regarded as fully human," says Lynn Paltrow, a feminist lawyer and executive director of the New York-based National Advocates for Pregnant Women. "Our concern is that this programme will result in an increase in prejudice and misinformation about drug use, addiction and about the women and children affected by it. . . ."

Is this the path that Barbara Harris's movement is heading down? "The more you dig, the more frightening this is," Paltrow says. "On some level, I do believe Barbara Harris is a sincere person who does not set out to be discriminatory. But the consequence of her programme is to blame the individual and provide further incentive to government to de-fund any kind of public services." As the gap between rich and poor grows ever wider under a Bush administration seemingly intent on privatising social services altogether, Paltrow's fears may not be entirely unfounded.

America's new family values: There's a stark deal available to U.S. drug addicts get yourself sterilized and earn \$200. *The Independent (London)*, (November 29, 2003)
By Andrew Gumbel

of drug users, it has won significant support for a program and an ideology that is at the core of civil rights violations and eugenic population control efforts.

During the year NAPW also kept an informal national group of watchdogs, including individuals from such organizations as the California ACLU, INCITE, the Committee Against Racism and Abuse, and the Committee on Women, Population and the Environment informed of C.R.A.C.K.'s efforts. We prepared fact sheets and a power-point presentation that we have shared with our allies and used to educate the media. NAPW has been widely recognized as a leading opponent of the C.R.A.C.K. program. We appeared on both local and international television from the ABC Local News to Belgium TV to the Fox channels including the Bill O'Reilly show. Our staff and board representatives were also interviewed on numerous radio talk shows across the country from New York to San Diego and Honolulu. In addition, print stories ran in newspapers throughout the country including *The New York Times*, *The Village Voice*, *The Washington Times*, and *El Mundo*, a Spanish language newspaper.

As a result of our aggressive efforts with the media, we are seeing a shift in the press coverage of the program and the issue of women and drugs in

general. Stories are more nuanced and critical of the punitive policies being promoted. Overall, this coverage demonstrates that we can make progress towards having a more compassionate, evidence and human rights based perspective represented in the media.

The New Jersey Child Welfare Debacle

For the New Jersey child welfare system, 2003 proved to be a revealing year. The state's Family Services became the focus of national attention in January after it was disclosed that the agency had prematurely closed the file on Faheem Williams, the seven-year-old boy who was found dead in a Newark basement. Continuing coverage highlighted the agency's abysmal failure to protect its foster children. Instead of targeting and tackling the real cause of the agency's dysfunction, it appears that the New Jersey Department of Human Services sought to divert attention and to blame pregnant women.

In June of 2003 the agency issued a report claiming that a full 13% of infant deaths in the state were "due to" pregnant women's drug use. NAPW discovered that, in fact, the report cited no data establishing a link between drug use and infant fatalities. When NAPW board member Dr. Robert Newman pressed the commissioner who authored the report for the supporting information, the commissioner candidly conceded that the agency, in fact, had no basis for reporting a causal link between drug use during pregnancy and child fatality. NAPW, along with Dr. Newman's organization, the Baron Edmond de Rothschild Chemical Dependency Institute of Beth Israel Medical Center, demanded a formal retraction of the report. We sent a copy of the letter to leading policymakers and children's advocates, as well as to the reporters who had uncritically reported the findings. We challenged them to be more skeptical and to demand proof when reporting claims of harm by pregnant women who use the kind of drugs targeted for criminalization.

Media Exposure

For an organization of our size, NAPW receives a remarkable amount of media coverage. NAPW's willingness to represent some of America's most demonized and dehumanized women and to take on controversial issues has given us extraordinary opportunities to get our message out — and to gain "earned media."

This year, NAPW and our work appeared in newspapers nationally and internationally including Europe, Asia and Africa. We also appeared on numerous radio and television shows across the country. For NAPW, every media "hit" provides more than organizational visibility.

Lynn Paltrow, head of National Advocates for Pregnant Women, a New York-based advocacy group, observes that fetal murder laws are always turned on the women and used to convict and imprison them for murder or child abuse, on the grounds that they used drugs or alcohol or didn't get prenatal care.

Sheryl McCarthy, Abortion Foes
Exploit a Murder to Kill Roe v. Wade
Newsday, July 3, 2003

It is an important opportunity to educate the American people and the international community. Likewise, each time we are contacted by journalists, it enables us to engage these individuals who have significant leverage in shaping the language and tone of the war on drugs and women. This year, in addition to coverage on our cases, our opposition

to the Unborn Victims of Violence Act, and our public education campaigns NAPW was featured in the Ford Foundation Report, and in TRIAL magazine. TRIAL, the Journal of the Association of Trial Lawyers of America pub-

lished an extensive interview with Executive Director Lynn Paltrow in “The Fight for Reproductive Rights.”

Covering the Cases

The majority of our media exposure comes from coverage of the legal cases with which we are involved. The McKnight decision alone generated dozens of opportunities to let the world know that South Carolina was more willing to punish than treat a pregnant woman and that conservative judicial activism — in which the court makes law rather than interprets it — is alive and well there. In fact, the outrage demonstrated in the media over the McKnight decision was the silver-lining: it enabled NAPW to mobilize new allies and support.

For example, even the local Charleston newspaper, the *Post and Courier* gave our side unprecedented space to explain how counterproductive the decision was:

“Instead of spending the bulk — 48 percent — of its justice system expenditures on imprisonment, Paltrow suggests that South Carolina cut costs by implementing more treatment programs.

These range in cost from \$1,800 to \$6,800 a year versus the national average cost of incarceration of about \$25,000 a year, according to the Bureau of Justice Statistics.”

And local lawyer and activist Susan Dunn was quoted as saying: “We need to stop having knee-jerk responses to very real problems,” Dunn said. “We have to be supportive if what we’re really interested in is healthy babies, and I think we are.”

Likewise, our litigation and legal advocacy efforts enabled us to be a strong voice of dissent

in the arrests of Stacey Gilligan in Glens Falls, New York and Tayshea Aiwohi in Hawaii. Media coverage of these cases has given us more opportunity to articulate the larger political issues at play and to have the medical information about drug-related harm more accurately reported.

"What it comes down to is this: When you're sick, do you provide health care or punishment?" said Lynn Paltrow, one of McKnight's attorneys and the executive director of New York-based National Advocates for Pregnant Women. "Do you have evidence-based, cost-effective policies or ones based on myth and costly misinformation?"

Kathy Stevens, Fetal-drug prosecution ignites debate in S.C.; State stands alone in arresting women who engage in risky behavior, *The Post and Courier*, (February 23, 2003) at 1A.

DRUG TREATMENT

‘We now have confirmation that the people of South Carolina support shifting state money from punishment to treatment.’

Wyndi Anderson
S.C. Advocates for Pregnant Women
Poll: Prison not for pregnant users
600 S.C. voters answered survey
By Jeffrey Collins
The Associated Press

South Carolina Poll

In addition to responding to a multitude of media requests for comments and information, NAPW also creates media opportunities through the release of new data and reports. In March of 2003, NAPW released our South Carolina Poll results by holding a press briefing at the South Carolina State House. (See more below). We worked with Sensei Health Communications and the Drug Policy Alliance to develop media materials and to ensure broad coverage of the event. As a result of our briefing, we received state-wide press, as well as coverage on radio and TV.

Publications

NAPW has also been able to get important compassion based,

drug policy reform and reproductive health messages into leading medical journals. These co-authored letters and articles appearing in prestigious medical journals are:

Wendy Chavkin, MD, MPH and Lynn M. Paltrow, JD, Physician attitudes concerning legal coercion of pregnant alcohol and drug users, Letter to the Editor, 188 *Am J. Obstet. Gynecol.* 298 (2003)

Lisa H. Harris, MD and Lynn Paltrow, JD, The Status of Pregnant Women and Fetuses in US Criminal Law, 289 *JAMA* 1697 (2003)

Mary Faith Marshall, Jerry Menikoff, and Lynn M. Paltrow, *Perinatal Substance Abuse and Human Subjects Research: Are Privacy Protections Adequate?*, 9 *Mental Retardation and Developmental Disabilities Research Reviews* 54-59 (2003).

In each of these articles we challenged assumptions about the nature of addiction and the putative benefits of punitive approaches. We also worked to challenge attacks on reproductive rights and the mainstream pro-choice movement's narrow response to it. In an article entitled, *The Unborn/Abortion Smokescreen*, published in *Z Magazine*, Lynn Paltrow argued that many of the latest attacks on reproductive rights do far more than threaten *Roe v. Wade*. They undermine women who seek to continue their pregnancies to term and distract attention from issues, like health care, around which broad political consensus can be built.

In addition to these articles, a version of the article, *The War on Drugs and The War on Abortion* was republished in a college textbook, *The Criminal Justice System and Women*. Also, *Punishment and Prejudice: Judging Drug-Using Pregnant Women* was republished in a leading bioethics textbook, *Taking Sides: Bioethical Issues*.

Materials, including some we have written and others we have identified as highly useful, have been distributed at key forums and events including the Take Back America Conference, continuing legal education programs sponsored by the Practicing Law Institute ("Child Abuse, Neglect and the Foster Care System") and the Legal Support Unit of Legal Services for New York City, and the National Health Law program, Health Advocate's Conference, as well as to lawyers, students, activists, and health care providers across the country. As one grateful recipient wrote:

"I just received the packet and wanted to let you know that what you sent is perfect. I'll be able to go through that and it will be wonderful for our committee to have so many resources. Thank you again for your time and expertise!"

Bess Pagano
Araphoe House, Inc
Colorado

Public Speaking

NAPW staff travel the country speaking at health, organizing and harm reduction conferences, medical and bar association meetings, medical schools, residency programs, law schools, colleges and a variety of other engagements. In 2003, we had dozens of speaking engagements, from Hawaii to New York. In February, for example, NAPW's executive director was the keynote speaker at the North American Society



Left to right: Robert Pugsley, Lynn Paltrow, Sheila Cummings, Renee Chelian, Timothy Thompson, Dr. Ann Boyer at Wayne State University Law School 6th Annual Symposium
Project Prevention: Cash for Birth Control, a Solution or Violation of Rights?

for Psychosocial Obstetrics and Gynecology. This engagement provided an opportunity to speak broadly about assaults on pregnant women, the devastating impact of the war on drugs and the need for greater activism by the medical community. Several of the conference participants have emerged as key activists, working to get their organizations to take public stances opposing the prosecution of pregnant women. Others have gone on to question articles that suggested that arrest is a successful approach, and many have signed on to public statements opposing punitive approaches.

In addition to our many public appearances opposing the C.R.A.C.K. program, NAPW organized a workshop and presented at the SisterSong Women of Color Reproductive Health Collective, Reproductive Health and Sexual Rights National

Conference. We also took to the streets of New York City as an invited rally speaker opposing current attacks on women and families, and inspired new activists at the Young Women's Health Summit in South Carolina.

Our work to expand women's reproductive rights is often the vehicle for cutting-edge drug policy and criminal justice reform efforts. As the war against abortion rights and for fetal rights is increasingly used as a wedge to expand the war on drugs, NAPW is also using these issues to expand support for human rights.

Our intersectional work provides us unique opportunities to reach health care providers and others who are not likely to otherwise hear about harm reduction or consider the implications of punitive policies for women's health and rights. For example, Wyndi Anderson NAPW National Organizer spoke at a North Carolina "Baby Love" conference reaching hundreds of North Carolina State Health Workers. The title of her workshop was

Wyndi:

I just wanted to say thank you for coming to Furman tonight. Your words had a tremendous impact on me . . . If anything, you made me even MORE pro-choice than I already was, and I was pretty freaking Pro-Choice before I came. I felt like your presentation was one of the best one's I have heard at Furman. The talk was incredible, I thought. Again thank you for doing what you do.

Sincerely,
Teal Johnson

Dear Ms. Paltrow:

Thank you for speaking at the Root-Tilden-Kern Monday Night Speaker Series . . . Our students have told me that they truly appreciated your presentation . . . Many students have told me that you were inspiring – even galvanizing!

Victoria L. Eastus
Director, Root-Tilden-Kern
Scholarship Program and Public
Interest Law Center,
New York University

and compassionate perspective.

Treatment: An Alternative for Pregnant Drug-Using Women.

Comments from the evaluations included:

- "Really brought up some issues I hadn't thought about before—We have such a double standard toward drug abusers . . ."
- "eye opening-informative;"
- "not every pregnant [drug using] woman is black, poor, and uneducated;"
- "Help[ed] to expose the myth of the 'typical' drug addicted person. Caused me to challenge my beliefs;"
- "She showed me that there's much more than just a pregnant person using drugs;"
- "realizing racism of drug problem"

Whether as keynote or panel speaker or conference participants, NAPW speaks out, educates and organizes people from all walks of life to take action from a more informed

Local and National Organizing

Organizing is a key component to everything NAPW does, as evidenced by our litigation, litigation advocacy, public education, training and outreach efforts. We seize every opportunity to develop and strengthen a wide net of diverse individuals and organizations, expertise and interconnected issues in order to protect the rights of drug-using pregnant and parenting women. Years of national organizing has paid off. When a circumstance like the arrest of Stacey Gilligan occurs, NAPW is now in the

position to mobilize a significant faction in opposition. In her case, within a week, we were able to secure the signatures of over fifty public health organizations and related advocates. Likewise, when Arizona was considering a law that created a presumption of parental neglect based only on a positive drug test, when the McKnight decision came down and when the term "crack baby" was used, we accessed our growing network of leading academics, researchers and public health organizations to speak out. Although we are fighting

well-funded and organized opponents pushing the drug war, fetal rights legislation and ideology, and increasing the stigma of drug addiction – especially of poor pregnant women, we have seen that our efforts make a difference.

Creative Collaborations

The ability to create effective collaborations is an integral part of NAPW's organizing work as well as our litigation and public education efforts. An important example of this is the project we have initiated with Ibis Reproductive Health, a Boston-based organization that conducts clinical and social science research, policy analysis and evidence-based advocacy to improve women's reproductive health, choices, and autonomy worldwide. NAPW asked Ibis to help us analyze the data we have been collecting, which documents every case in which a woman has been arrested based on allegations that her health, behavior, or circumstances posed a threat to fetal health. Our report, which we expect to publish in 2004, will provide a comprehensive analysis and profile of the punishment of pregnant women that is based on claims of "fetal rights" and the war on drugs.

NAPW has also developed a partnership with the Women's Information Network (WIN), an all-volunteer organization for young, pro-choice, women in the Washington DC metropolitan area to conduct diversity training. The training, led by Wyndi Anderson, discusses race, class, power, and diversity issues as they relate to WIN and the pro-choice movement. Through this teaching we hope to broaden the scope of reproductive rights, pro choice activism and ideology by developing new relationships and understanding with and among young leaders. Our meetings began in October and will continue into 2004.

We have built on our work through many other collaborations as well. For example, we worked with the Positive Health Project to help develop a booklet for pregnant women who use drugs—Don't Give up Hope: A Guide to Having a Healthy Baby. We also consulted with the Harm Reduction Coalition in their efforts to work with pregnant women, reviewed an article written for

the American College of Nurse Midwives, and shared information and resources with such diverse organizations as the Rebecca Project for Human Rights, Justice Now, Generation Five, the National Abandoned Infants Assistance Resource Center, the National Coalition for Child Protection Reform, CPS Watch, DPA and many others, including those discussed below. We also co-sponsored events including the SisterSong Reproductive Health and Sexual Rights Conference, in Atlanta Georgia and the National March for Women's Lives, scheduled in 2004. We also marched in solidarity with those seeking to end the Rockefeller Drug Laws, and developed relationships with Doctors of the World USA and the Hygeia Foundation, both organizations that offer medical expertise for the cases and issues we work on.

South Carolina

Over the past several years, South Carolina's courts have made it increasingly clear that it views drug-related problems during pregnancy as crimes, not the health problems they are. It is also clear that racial discrimination still motivates its policies. Because South Carolina is the state cited by those supporting punitive legislation and new prosecutions of pregnant women, we continue to make South Carolina a primary focus for NAPW organizing.

In 1997 the South Carolina Supreme Court issued the landmark decision in the *Whitner v. State* case finding that a viable fetus is a "child" under the state child abuse and endangerment statute. Since then there has been a notable increase in infant mortality rates. In fact, South Carolina has one of the highest infant mortality rates in the nation. Moreover African-American babies are more than twice as likely to die during the first year of life as white babies. Likewise, significantly fewer African-American women receive adequate prenatal care than white women. Participation by both African-American men and women in drug treatment programs has also decreased considerably, while people populating the state's prisons on drug charges are overwhelm-

ingly and disproportionately African-American. This is true despite the fact that people of all races use illegal drugs at comparable rates.

South Carolina's policies appear to do exactly what the public health groups predicted: deter women from seeking prenatal care and drug treatment for fear of arrest or child welfare interventions. As a result, women do not get the care that could otherwise protect them and their future children. That is why every leading medical group in the state and nation to address the issue, including the American Medical Association and the South Carolina Medical Association, oppose the state's policies. Nevertheless, health care providers have been enlisted as agents of the police. Numerous public hospitals target African-American patients for testing and reporting based on seemingly neutral criteria.

We focus on South Carolina not only because its policies are clearly counterproductive and inhumane, but also because we know that each time South Carolina expands the war on drugs and women, it has the potential to inspire new prosecutions and new punitive legislation in other states tempted by the seemingly quick fix, high profile solution they "offer."

While NAPW has been doing local organizing in South Carolina since its inception, 2003 proved to be a significant year, with efforts spurred by the outrage over the McKnight decision and the release of our poll data. It was a year of laying solid groundwork and strong foundations, building on relationships with organizations and individuals and preparing to launch new leadership development and advocacy efforts. We continued our support of and collaboration with our sister organization South Carolina Advocates for Pregnant Women (SCAPW). 2003 also made it abundantly clear that we can make a real difference in organizing communities of color and others to oppose

counterproductive drug laws and policies. In moving forward, NAPW is committed to hiring a South Carolina-based organizer and hopes to make it a prominent base for challenging drug war activities and for advancing reproductive rights and health in southern states.

Our Poll

In October of 2002, NAPW initiated a statewide survey of 600 registered South Carolina voters, conducted by the Global Strategy Group, Inc. Survey questions probed voters' perceptions of a range of topics including drug use, drug treatment, and pregnancy in South Carolina. Though originally conducted to provide an evidence-based foundation for NAPW and SCAPW's work, the poll became another critical organizing tool. We used the release of the data to provide a forum for local and national organizers and activists from the health, civil rights and religious communities to converge, hosting a breakfast and then a

formal press briefing. We also prepared a comprehensive package of information that attendees could use and take back to their constituencies.

The poll results were reassuring. We learned that while some people may believe South Carolinians take a uniquely punitive stance on certain issues, like all other Americans they are growing weary of costly, "all punishment — all the time" policies. Our press briefing at the capitol brought significant attention to our findings and demonstrated our organizing ability. Nearly twenty of us stood together, African-American and white, lawyers, health care providers, religious leaders, legislators and policy-makers, local activists and national experts — determined to challenge the myth that punishment is the only viable policy response to people who use illegal drugs. With

South Carolina should change its license plate motto from "Smiling Faces, Beautiful Places" to the far more apt "Antepartum Police State." The state has tried persistently and for years to make women criminally liable for their pregnancies. . .

Certainly women who want to give their developing baby the best chance at a healthy start should stay away from all illicit drugs. But the law shouldn't be allowed to treat women as little more than incubators - where the pregnancy police rush in when ever she veers from the prescribed regimen.

Robyn E. Blumner, Moralists' new target: pregnant women
St. Petersburg Times,
Aug. 10, 2003

national expert, Dr. David Lewis of the National Physician Leadership on Drug Policy, at our side we made significant headway in educating both allies and opponents.

We found:

- South Carolinians believe drug use is a serious problem facing their state and look to leaders to develop effective measures to combat the problem of addiction.
- Voters are skeptical of punitive measures used to address drug use. A majority of South Carolina voters believe that the war on drugs has been ineffective in reducing illegal drug use in South Carolina.
- Voters see treatment as a more effective option than prison. Seven in ten South Carolina voters (71 %) believe that the best way to handle drug use is to help addicts and users get treatment compared to 23 % who believe users should be put behind bars.
- Voters understand the efficacy of treatment in fighting drug addiction and ensuring the health and well-being of South Carolina's families. When asked how local government should respond to pregnant women using illegal drugs, voters are three times more likely to opt for treatment than jail time. 70% also believe that tax dollars spent on building prisons could be better spent increasing the number of drug treatment programs available to pregnant women.
- South Carolina voters recognize the need for more drug treatment centers throughout the state. Half of South Carolina voters believe the state does not have enough alcohol and drug treatment centers.

To the Editor

The prison population in this country outnumbers any other industrialized country. The increase in the number of prisoners in South Carolina is due largely to locking up non-violent drug offenders. Many of those people locked up could be getting much-needed drug and alcohol addiction treatment and rehabilitation, working toward leading healthier lives.

Recent polling found that South Carolinians across party lines support treatment over punishment. In a state where we have chosen to target pregnant drug-using women and lock them up, it makes sense that our prisons are overflowing with people who need health care. The whole notion of alternative sentencing is something we need to consider, but please, let's not forget – non-punitive, accessible drug treatment in this state will go far to prevent filling the prisons in the first place.

Wyndi Anderson

Wyndi Anderson, Letters to the editor: Drug offenders, *The Post and Courier* (Charleston, SC), (August 9, 2003)

■ Voters stand behind their commitment to drug treatment and would be willing to pay to expand the availability of drug treatment centers in South Carolina. Fifty-three percent of voters say they would be willing to pay an additional \$100 in state taxes to expand the availability of treatment, including two in ten who would be very willing.

The results of the poll bolstered our resolve and gave us more than ample evidence to continue the work we do.

Preparing for the Primaries

In light of our findings, local activists contacted NAPW asking us to prepare a briefing paper for the South Carolina Democratic Primary. Seeing an opportunity to not only provide assistance to the local community, but also to educate national figures, NAPW created a "presidential" briefing paper based on the

poll findings. The paper, entitled, South Carolina: First in Arresting African-American Women, Last in Funding Drug and Alcohol Treatment showed how the state was disproportionately targeting African-American pregnant and parenting women for punishment based on their drug addictions. We distributed copies to all of the presidential candidates.

Empowering Communities into Activism

To oppose the drug war in general and South Carolina's race based punitive drug policies in particular, NAPW is working with key organizations to empower communities and to facilitate activism. NAPW and Be Present Inc.,

(BPI) worked hard to put together an application to the Tides Foundation to train and develop a core group of activists in communities of color. Be Present is a diverse national network committed to improving the economic, health, and political status of women and girls through the development of individual and collective leadership and advocacy skills, as an organic first step in achieving gender justice, social equality, and progressive change. In 2003, BPI received the seed money to work together on this effort and we are extremely excited about moving forward in 2004.

One thing that makes South Carolina different from other states is the abysmal lack of education and training offered to professionals working with drug users. Health care providers and child welfare workers have limited, if any, training in addiction treatment and often are not only appallingly ignorant, but extremely hostile. To this end, NAPW and SCAPW has made special efforts to reach out to health care providers. We were pleased, for example, to send Ellen Miller-Mack, R.N.-C, A.N.P., to speak at the South Carolina Primary Healthcare Association Conference addressing healthcare employees of the community health centers. This was an important opportunity that developed out of our amicus organizing efforts and the meetings we held in conjunction with our poll date press briefing.

NAPW was also instrumental in having South Carolina selected by Columbia University School of Public Health's Women's Health and Human Rights Advocacy Project (WHHRAP) as a target state. WHHRAP works to develop the advocacy capacity of state-based groups addressing the reproductive and overall healthcare of low-income women, including issues of drug use and drug policy. In 2003, we began this work by helping to identify state based organizations and activists who would help identify grass roots women's health activists with whom we can build alliances and develop advocacy.

In addition, the Rebecca Project, Serenity Place, the South Carolina Primary Health Care Association, South Carolinians for Drug Law Reform, Generation Five, the Nancy Thurmond Substance Abuse Initiative, Clemson University, Regenesys Community Health Project and Pastor Wray Winborne of the Charleston Interfaith Ministers Alliance all have been meeting with us to address South Carolina's uniquely draconian approach to drug addiction and pregnancy.

Finally we are pleased to replicate and build on the valuable lessons South Carolina teaches. In Kentucky, Arizona, Missouri and other states that we work in, we identified local advocates, offered them support and urged them to action that promotes the humanity of pregnant women, drug users, and low-income families.

Who We Are Staff and Board of Directors

This proved to be an exciting year for NAPW board development. In our efforts to transform NAPW from a small start-up to a sustainable organization reflecting a collective vision and shared commitment, NAPW staff and board members participated in our first retreat.

The overall aim of the retreat was to address questions about how NAPW would make the transition from a small start-up organization dependent on the founding executive director to one that will

grow beyond the initial staff and obtain the increased support necessary to achieve its long-term mission.

The meeting was a powerful experience for all participants. By its close, we established important clarity about the role of the Board in taking NAPW to "the next level" and commitment from Board members to ensure NAPW's transition to a more mature, established and expanding organization. We ended with a commitment to

hold more frequent board meetings, as well as specific tasks relating to space, fundraising, and identifying future board members and in participating in a long term and ongoing strategic planning process.

Staff

LYNN M. PALTROW, J.D., is the Founder and Executive Director of National Advocates for Pregnant Women. Ms. Paltrow is a leading national litigator and strategist in cases involving the intersection of the war on reproductive freedom and the war on drugs. Ms. Paltrow has worked on numerous cases challenging the prosecution and punishment of pregnant women, including: *In re: A.C.*, *California v. Stewart*, *Johnson v. Florida*, and *Whitner v. South Carolina*. Ms. Paltrow also conceived of and filed the first affirmative federal civil rights challenge to a hospital policy of searching pregnant women for evidence of drug use and turning that information over to the police. In the case of *Ferguson et. al., v. City of Charleston et. al.*, the United States Supreme Court agreed that such a policy violates the 4th amendment's protections against unreasonable searches and seizures. She is also co-counsel or an advisor in numerous recent cases including *State v. Peppers* and *State v. McKnight*, involving challenges to criminal charges brought against women who have suffered stillbirths.

Ms. Paltrow frequently lectures and writes about the intersection of drug and reproductive rights policies. She is also a founding member of Be Present Inc., a national organization devoted to empowering women and girls. She has served as a senior staff attorney at the ACLU's Reproductive Freedom Project, as Director of Special Litigation at the Center for Reproductive Law and Policy, and as Vice President for Public Affairs for Planned Parenthood of New York City. She is the recipient of the Arthur Garfield Hays Civil Liberties Fellowship, the Georgetown Women's Law and Public Policy Fellowship, and the Justice Gerald Le Dain Award for Achievement in the Field of Law.



Wyndi Anderson,
NAPW National
Organizer.

WYNDI MARIE ANDERSON is NAPW's National Organizer and continues to act as Director of South Carolina Advocates for Pregnant Women. She is a leading social justice advocate who has been working for the protection of human rights for over ten years. Her recent work on behalf of pregnant and parenting women and their families has earned her national recognition as a leader in both the women's rights and the drug policy reform movements. She has been profiled in local (*The [Charleston] Post and Courier*) and national (*Ms. Magazine*)

publications, and is frequently sought out for comment by media. As the co-founder and Executive Director of the South Carolina Advocates for Pregnant Women and the founder and President of the South Carolina Women's Choice Fund, Ms. Anderson has been one of the most consistent and vocal advocates for women's rights in the state. In 2001, she also began sharing her expertise nationally, working as the national organizer for the National Advocates for Pregnant Women.

A graduate of the College of Charleston, and the 2002 recipient of the young alumni of the year award, Ms. Anderson spent four years in Washington, DC, working in various social justice movements, including the labor rights movement, where she received her training as a grassroots organizer, before returning her attention to human rights in South Carolina. Since 1998, her work has focused primarily on securing legal rights and access to appropriate health care for pregnant and parenting women, as well as ensuring that all women have access to a full range of reproductive health care services.

Board of Directors

MARIA ARIAS, JD is an Assistant Professor at CUNY Law School, Director of the Battered Women's Right's Clinic at CUNY Law School and serves on the Board of Be Present Inc.

MACHELLE HARRIS ALLEN, MD who served through mid 2003 is Director of Ambulatory Obstetrics and Gynecology at Bellevue Hospital and Assistant Professor of Obstetrics and Gynecology at New York University School of Medicine.

JULIE CHARTOFF, JD is a Staff Attorney, Harlem Legal Services, working specifically on cases involving domestic violence and women's rights and is familiar with a range of issues concerning drug treatment.

MARIA GUARASCIO, JD is an attorney in private practice and served as volunteer staff on *Ferguson et. al. v. City of Charleston*. Ms. Guarascio serves as NAPW's Secretary/Treasurer.

SARA KERSHNAR, M.P.H is working with Generation Five, an organization committed to ending child sexual abuse through the development of supported and effective leadership. She recently completed her MPH at Harvard University. Prior to graduate school, she founded and worked with the Harm Reduction Coalition, a national non-profit committed to mobilizing a public health, social justice approach to drug-related harm. She serves as NAPW's board President.

ROBERT NEWMAN, M.D., M.P.H. is Director of The Edmond de Rothschild Foundation Chemical Dependency Institute of Beth Israel Medical Center. He is also President Emeritus of Continuum Health Partners, a major non-profit hospital corporation, and a professor in the Albert Einstein College of Medicine's departments of Psychiatry and Epidemiology and Social Medicine.

LYNN M. PAITROW, JD, is the Executive Director and Founder of NAPW and serves on the board.

SUSAN WEILER, JD is an attorney and former volunteer staff attorney at Center for Reproductive Law and Policy. She currently works in the arts.

IVAN ZIMMERMAN, JD is WYNC Radio's General Counsel, and former General Counsel to Planned Parenthood of New York City.

* Organizations for identification purposes only.

Advisory Board

NAPW also has an informal advisory board of people committed to NAPW's development and to ensuring its understanding of a broad base of intersectional issue.

CORINNE CAREY, JD is an attorney Director Harm Reduction Law Project, providing legal services to people who use drugs. Her research provided the foundation for the NAPW Overview of state and federal laws and she is author of: *Crafting A Challenge to the Practice of Drug Testing Welfare Recipients: Federal Welfare Reform and State Responses as the Most Recent Chapter in the War on Drugs*, 46 *Buffalo L. Rev.* 281 (1998)).

PHILLIP OLIVER COFFIN, M. INT. AFFAIRS, recently resigned from the board to attend Medical School at UCSF. Mr. Coffin recently served as a project director at the Center for Urban Epidemiologic Studies at the New York Academy of Medicine, where he studied HIV prevention among drug users. He received his Masters in International Affairs from Columbia University, where he studied political, legal and public health issues in social policy.

GLORIA KNIGHTON is an administrative assistant, paralegal, former CRLP staff member and is a treatment services consumer.

DEBORAH PETERSON SMALL, JD an attorney, is Director of Public Policy & Community Outreach for the Drug Policy Alliance, and a leader in the fields of drug policy reform, civil rights and community organizing.

Interns and Fellows

NAPW's ability to produce quality work is in large measure due to the contributions of talented interns and fellows who volunteer and are placed with our organization. In 2003, the following students helped to make our work possible:

JESSICA DELL, City University of New York School of Law, Legal Intern.

EMILY FEINSTIEN, New York University School of Law Brennan Center, Intern.

ELIZABETH FRANKEL, New York University School of Law Summer Public Interest Intern.

LYNN LU, New York University School of Law, Arthur Garfield Hays Civil Liberties Fellow.

CHANA PORTER, Hampshire College Civil Liberties Program Intern.

WEN-HUA YANG, New York University Wagner Graduate School of Public Service, Summer Intern.

NAPW is immensely grateful to Wen-Hua Yang and Elizabeth Frankel who were instrumental in helping to set up and creatively furnish NAPW's first office. We also wish to acknowledge and thank Wen-Hua who while finishing her degree acts as our office manger, to Acrea McIntosh who makes herself available to help with numerous administrative and research tasks, and to our accountant Kamlesh Singh and our auditor Jean Jeremie, CPA.

Grants and Donations

NAPW relies primarily on foundation grants and individual donations to sustain us. Two major donors, the Ford Foundation and the Tides Fund for Drug Policy Reform are responsible for the bulk of our grant money. We are pleased to report that last year the Ford Foundation was so impressed with our work that it increased our funding and gave us a two-year grant.

In reaching out to foundations, we confront the reality that there is relatively little support for women's rights and drug policy reform issues with limited support overall for social justice and legal advocacy. We know that just seven percent of all philanthropic dollars fund programs for women and girls. According to the report Giving USA, the more than 165 multi-million dollar gifts made by individuals in 2002, not one went to a women's organization. Our public education efforts, therefore, include not only those in policymaking positions but also leaders in the world of philanthropy. NAPW is thankful, however, for the progressive family foundations that have embraced our cause by continuing or beginning to fund us. These foundations include the Overbrook Family Foundation, the Pettus-Crowe Foundation and The Penthesilea Fund, Inc.

While foundation fundraising will take time to develop, NAPW has made significant progress with individual donors. An early commitment to building an individual donor base has paid off. Although individual donations still constitute less than 10 % of our budget, we increased such donations from four to nine percent in one year. We hope to continue that growth as our list of potential supporters grows and as our board members play a more active role in fundraising. Most importantly, we recognize the incredible importance of individual support in building our network of people committed to an inclusive and comprehensive vision of reproductive and human rights.



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